

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

AHMAD MOHAMMAD AJAJ	§	
VS.	§	CIVIL ACTION NO. 1:00-CV-302
LARRY FRANK, ET AL.	§	

ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Ahmad Mohammad Ajaj, a federal prisoner previously confined at the United States Penitentiary in Beaumont, Texas, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. §§ 1983, 1985, and 1986, and pursuant to *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), against Officer Sheffrey Ward, Officer Larry Frank, Lieutenant Keith Roy, Counselor Hernandez, Case Manager Hanks, Nurse Melinda Ross, Lieutenant Lofton, the United States of America, the University of Texas Medical Branch at Galveston, Warden Percy Pitzer, Townley, C. Ward, Ernest V. Chandler, Chad Lohman, Dickerson, Marshall, Haas, Willy Cox, Rick Brawley, Ross, Matt, Garcia, Jackson, Peveto, O. Ivan White, Jr., Ronald G. Thompson, and Haynes.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends dismissing the claims against defendants Roy, Hernandez, Hanks, Ross, Lofton, the United States of America, the University of Texas Medical Branch at Galveston, Pitzer, Townley, Ward, Chandler, Lohman, Dickerson, Marshall, Haas, Cox,

Brawley, Matt, Garcia, Jackson, Peveto, White, Thompson, and Haynes as frivolous and for failure to state a claim.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). First, plaintiff argues that the claims against defendants Ross and Ward should not be dismissed as frivolous because the claims against them survived an initial screening by the Magistrate Judge. Plaintiff's pleadings identified both of those defendants twice in such a way that it was unclear whether he was referring to additional defendants with the same last name. Due to plaintiff's clarification, it is clear that all claims against defendant Ross refer to one person, and the claims against defendant Ward refer to one person. Therefore, they will not be dismissed as frivolous.

Plaintiff contends the remaining defendants should not be dismissed because they were part of a conspiracy to cover up an assault by a staff member, in violation of 42 U.S.C. § 1985(3) and 1986. Plaintiff failed to state a claim under § 1985(3), because plaintiff did not support his allegations of conspiracy with material facts. *See Longoria v. Texas*, 473 F.3d 586, 593 (5th Cir. 2006) (disregarding conspiracy claim because plaintiff offered no evidence in support of his conclusory allegation). In addition, plaintiff alleged the defendants conspired to cover up an assault, and does not allege their actions were motivated by race. Finally, plaintiff failed to state a claim under § 1986 because the existence of a conspiracy under § 1985 is an element of a claim under § 1986. *Bradt v. Smith*, 634 F.2d 796, 801 (5th Cir. 1981).

ORDER

Accordingly, petitioner's objections (document no. 39) are **OVERRULED**, except to the extent that his claims against defendants Ross and Ward will not be dismissed as frivolous. The findings of fact and conclusions of law of the Magistrate Judge are correct in all other respects, and the report of the Magistrate Judge (document no. 37) is **ADOPTED**. A partial judgment will be entered in this case in accordance with the Magistrate Judge's recommendation.

So **ORDERED** and **SIGNED** this **28** day of **September, 2016**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge